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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,843	08/10/2000	James Francis Ulrich	00-107	7091

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EXAMINER	
PADEN, CAROLYN A	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/637,843	ULRICH, J.F. ET AL	
	Examiner	Art Unit	
	Carolyn A Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 May 2002*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25 and 73* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25 and 73* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1-9-01;6-11-01;2-2*. 9-22-03
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Applicant's election without traverse of Group 1 in the reply filed on May 14, 2002 is acknowledged. The examiner has dropped the requirement for an election of species that was made because the length of time that has passed since the election was made and because a number of other related applications and patents have issued that are directed to corn meal and corn feed. The line drawn between by restriction requirement between the product and process has not been maintained in all of the related cases. Thus the following double patenting rejections are now being advanced.

Claims 1-6, 8-17 and 19-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 and 37-40 of copending Application No. *09/927,836 alone or if necessary in view of Morrison.

The claims in the prior application are directed to a corn meal and a feed containing corn meal. The claims appear to differ from the reference in the suggestion of the inclusion of another nutrient. It is very well known in the art that corn meal does not contain the full complement of nutrients required by man or animal. Thus in order to enhance the nutrient content

of a feed and to also enhance the variety of feed starting materials in an animal feed, it would have been obvious to add at least one other nutrient to the corn meal. Further Morrison teaches that corn meal is often combined with a variety of different ingredients that are commonly used in feeds. It is appreciated that the particular amounts of each ingredient and the particular proximate analysis of the feed is not specifically shown in Morrison. But feed formulations for livestock are well known in the art because optimal growth of livestock and health is essential for the efficient production of animal products for food. The nutrient requirements for pets and horses and humans are also well known in the art because of all of the nutritional research that has been performed in the past.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-25 and 73 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending Application No. 09/927,836 which has a common inventor with the instant application. Based upon the earlier

effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e) if published or patented. This provisional rejection under 35 U.S.C. 103(a) is based upon a presumption of future publication or patenting of the conflicting application.

The claims in the prior application are directed to a corn meal and a feed containing corn meal. The claims appear to differ from the reference in the suggestion of the inclusion of another nutrient. It is very well known in the art that corn meal does not contain the full complement of nutrients required by man or animal. Thus in order to enhance the nutrient content of a feed and to also enhance the variety of feed starting materials in an animal feed, it would have been obvious to add at least one other nutrient to the corn meal. Further Morrison teaches that corn meal is often combined with a variety of different ingredients that are commonly used in feeds. It is appreciated that the particular amounts of each ingredient and the particular proximate analysis of the feed is not specifically shown in Morrison. But feed formulations for livestock are well known in the art because optimal growth of livestock and health is essential for the efficient production of animal products for food. The nutrient requirements for pets

and horses and humans are also well known in the art because of all of the nutritional research that has been performed in the past.

This provisional rejection might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application prior to the effective U.S. filing date of the copending application under 37 CFR 1.131. For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

This is a provisional obviousness-type double patenting rejection.

Claims 1-6, 8-16 and 19-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being

unpatentable over claims 1-9 of copending Application No. 10/422,295 in view of Morrison.

The claims in the copending application are directed to a corn meal. The claims appear to differ from the reference in the suggestion of the inclusion of another nutrient and in the suggestion of the used of corn meal in a feed or food. It is very well known in the art that corn meal does not contain the full complement of nutrients required by man or animal. Thus in order to enhance the nutrient content of a feed and to also enhance the variety of feed starting materials in an animal feed, it would have been obvious to add at least one other nutrient to the corn meal. Further Morrison teaches that corn meal is often combined with a variety of different ingredients that are commonly used in feeds. It is appreciated that the particular amounts of each ingredient and the particular proximate analysis of the feed is not specifically shown in Morrison. But feed formulations for livestock are well known in the art because optimal growth of livestock and health is essential for the efficient production of animal products for food. The nutrient requirements for pets and horses and humans are also well known in the art because of all of the nutritional research that has been performed in the past.

This is a provisional obviousness-type double patenting rejection.

Claims 1-25 and 73 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending Application No. 10/422,295 which has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e) if published or patented. This provisional rejection under 35 U.S.C. 103(a) is based upon a presumption of future publication or patenting of the conflicting application.

The claims in the co-pending application are directed to a corn meal. The claims appear to differ from the reference in the suggestion of the inclusion of another nutrient and in the suggestion of the used of corn meal in a feed or food. It is very well known in the art that corn meal does not contain the full complement of nutrients required by man or animal. Thus in order to enhance the nutrient content of a feed and to also enhance the variety of feed starting materials in an animal feed, it would have been obvious to add at least one other nutrient to the corn meal. Further Morrison teaches that corn meal is often combined with a variety of different ingredients that are commonly used in feeds. It is appreciated that the particular amounts of each ingredient and the particular proximate

analysis of the feed is not specifically shown in Morrison. But feed formulations for livestock are well known in the art because optimal growth of livestock and health is essential for the efficient production of animal products for food. The nutrient requirements for pets and horses and humans are also well known in the art because of all of the nutritional research that has been performed in the past.

This provisional rejection might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application prior to the effective U.S. filing date of the copending application under 37 CFR 1.131. For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Claims 1-6, 8-16 and 19-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,723,370 in view of Morrison.

The claims in the prior application are directed to cornmeal. The claims appear to differ from the reference in the suggestion of the inclusion of another nutrient and in the suggestion of the used of corn meal in a feed or food. It is very well known in the art that corn meal does not contain the full complement of nutrients required by man or animal. Thus in order to enhance the nutrient content of a feed and to also enhance the variety of feed starting materials in an animal feed, it would have been obvious to add at least one other nutrient to the corn meal. Further Morrison teaches that corn meal is often combined with a variety of different ingredients that are commonly used in feeds. It is appreciated that the particular amounts of each ingredient and the particular proximate analysis of the feed is not specifically shown in Morrison. But feed formulations for livestock are well known in the art because optimal growth of livestock and health is essential for the efficient production of animal products for food. The nutrient requirements for pets and horses and humans are also well known in the

art because of all of the nutritional research that has been performed in the past.

Claims 1-25 and 73 are rejected under 35 U.S.C. 103(a) as being obvious over Ulrich et al. (6,723,370) in view of Morrison.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that

the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

The claims in the prior application are directed to a corn meal. The claims appear to differ from the reference in the suggestion of the inclusion of another nutrient and in the suggestion of the used of corn meal in a feed or food. It is very well known in the art that corn meal does not contain the full complement of nutrients required by man or animal. Thus in order to enhance the nutrient content of a feed and to also enhance the variety of feed starting materials in an animal feed, it would have been obvious to add at least one other nutrient to the corn meal. Further Morrison teaches that corn meal is often combined with a variety of different ingredients that are commonly used in feeds. It is appreciated that the particular amounts of each ingredient and the particular proximate analysis of the feed is not specifically shown in Morrison. But feed formulations for livestock are well known in the art because optimal growth of livestock and health is essential for the efficient production of animal products for food. The nutrient requirements for pets and horses and humans are also well known in the

art because of all of the nutritional research that has been performed in the past.

Claims 1-25 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corn Chemistry and Technology (Watson) in view of Morrison.

Watson discloses high oil corn at pages 4, 45, 46 and 313-316. The concept of using high oil corn in animal feeding is shown at page 315. The animal feeding studies showed the substitution of high oil corn for regular corn at page 316. Milling corn into corn meal is shown at pages 351-358, 457-458. The use of cornmeal with other nutrients in food is shown at pages 364. The use of corn meal in animal feed is shown at pages 370-371, 447-450, 474 and 461-466. Flaking corn is shown to be a well-known process at pages 408. At Table I on page 448, the fat content and proximate analysis of corn meal is shown. The claims appear to differ from the reference in the suggestion of utilizing corn meal from high oil corn. It would have been obvious to one having ordinary skill in the art to extract oil from high oil corn as a way to provide edible oil for human consumption. The use of high oil corn in place of regular corn would probably enhance the economic gains of a farmer who usually grows corn as a main cash